IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No. 539 of 2007

Judgment reserved on: 13.11.2007

Date of Decision: December 26, 2007

Rajpal Sharma … Petitioner.

Versus

State of HP & ors. … Respondents.

Coram:

The Hon'ble Mr. Justice Deepak Gupta, Judge.
The Hon'ble Mr. Justice V.K.Ahuja, Judge.

Whether approved for reporting?

For the Petitioner	:	Mr. Rajesh Kumar, Advocate.
For the Respondent(s)	:	Mr. M.S.Chandel, Advocate General with Mr. R.M.Bisht, Deputy Advocate General.

Deepak Gupta, J .

The petitioner by means of this writ petition has sought the following amongst other reliefs:

i) That the final selection made by the respondents for Patwari Training Course, may kindly be quashed and set aside from the stage of personal interview, or in alternative the selections made by the respondents may kindly be ordered to be made on the basis of merit as secured in the written examination only;

ii) That the respondents may kindly be restrained from giving effect to the Patwaris Training Course to the candidates selected by the respondents in their final selection or in alternative the respondents may kindly be ordered or directed to create one seat for the petitioner in the respective category, pending the final adjudication of the present writ petition.

The brief facts of the case are that the respondent No.2 invited applications for selection to the one year and six months Patwaris Training Course. The candidates were asked to apply to respondent No.3 on the prescribed proforma for written examination consisting of 100 marks. Thereafter, on the basis of written test, candidates were called for interview and the marks allocated for interviews were 15. The petitioner also applied for the said course and the result was declared in the various news papers on 15.2.2006. The petitioner was also successful in the written test but after the interview, he was found unsuccessful.

Interviews were held on 2.7.2006 and the result was declared on 2.9.2006. Thereafter the petitioner applied under the Right of Information Act and approached various authorities claiming that the interviews were just a smoke-screen and favoured persons had been selected by giving

them higher marks in the written test. The petitioner thereafter the present petition was filed on 23.9.2007. The main challenge of the petitioner is to the holding of interview for such a course and it is contended that awarding 13.5% marks are very high.

During the course of hearing of the case, we had called for the records from the office of the Deputy Commissioner, Mandi and we find that the manner in which the applications were invited and the selections made were not in accordance with the law and guidelines laid down by this Court. The Patwari Training Course is in the nature of an educational course. It is not an offer of employment. This court in **Ravinder Baloria** versus**. State of H.P. & others CWP No. 722 of 2004,** wherein a similar question was raised with regard to the validity of interview test and the weightage to be given to such interview test for admission to candidates to the Junior Basic Training Course (JBT), had passed the following directions :-

> "Taking into consideration the entire law cited before us, it is no doubt true that the Supreme Court has held that viva voce test can be held to assess the suitability of the candidates. However, the question is whether such a test is necessary for admission to a course like the JBT course. A written test is being held to assess the capability of the candidate. The candidates are only to be granted admission to JBT course. No employment is being

> given. In the last 10-15 years, the trend has been, that so far as, admission to educational institutions is concerned, no marks or very few marks are allotted for interviews. For admission to course like MBBS/BDS, Law, M.A. etc., no viva voce test or interviews are held. There is hardly any justification for keeping 15% marks for interview for admission to the JBT course especially when the interviews were conducted by separate interview Boards all over the State. Every interview Board could have evolved its own criteria and judged the candidates in a different manner. The petitioners have not been treated equally and, prima facie, award of 15 marks for interview in the present case appears to be unjust and illegal and violative of Article 14 of the Constitution of India."

Thereafter in **Rajiv Sharma** versus **State of H.P. & others** (CWP No. 611 of 2004), a similar question was also raised with regard to the validity of interview test for the training course of Veterinary Pharmacist. In this case, this Court after considering the entire law, held as follows:-

> "The main concern of the respondents should be the interest of the student community as a whole, to afford them equal opportunity for getting admission to the course of Veterinary Pharmacist. The written test appears to be the best mode. The method of interview as in the present case will result in discrimination since 20% marks have been kept for interview which lends sufficient credence to the submission of the petitioner that these marks are to be utilized to grant admission to the favourites on the basis of extraneous consideration. The Apex Court even in cases of public employment where the method of interview may have some importance, in the case of **Ashok Kumar Yadav** (supra) clearly stated that even with relation to recruitment to the Civil Services allocation of more than 12.2% marks is not justified. In the present case we are concerned with the admission to a vocational course which cannot even be equated with a graduate course. Young impressionable teenagers who have just finished their studies at the school level are

taking this test. It would also be pertinent to notice that keeping in view the nature of the course a large number of candidates are from rural areas and some from semi-urban areas and very few from urban areas. An interview will put a candidate from the rural background at a dis-advantage. As far as the academic performance is concerned it can be judged only on the basis of the marks obtained by them in the entrance examination.

The candidates are being selected not for any public employment but only for two years, post school, vocational course. The manner in which the oral interview test has been conducted in the present case leaves vast scope for discrimination, manipulation and nepotism which may remain undetected under the cover of an interview. There is no reason why the respondents should insist on the interview. There are no reasons to test the personal traits of a candidate for admission to a course like the Veterinary Pharmacist course. There is inherent weakness and infirmity in the system of interviews itself which is subjective rather than objective. The major role is played by the subjective assessment of the Selection Committee. The students who are seeking admission are young and predominantly belong to rural areas and personality of such students still remained to be developed and as such the only consideration for their admission to the course should be their academic performance.

Keeping into consideration the entire law cited above and the present existing situation we hold that the interview test is totally uncalled for and should not be conducted for admission to courses of the nature like Veterinary Pharmacist, JBT etc. where young boys and girls whose personality has not fully developed are to be judged. In the facts of the present case the interview test is illegal, discriminatory and suffers from the vice of arbitrariness. Hence, it is violative of Article 14 of the Constitution of India.

In the present case the admission to the Veterinary Pharmacist course is over and the course itself started in August, 2004. The petitioner himself has contributed to the delay since he approached the Administrative Tribunal which had no jurisdiction and has come to the Court much later. The persons who have already been selected would be affected by the result of the case. They have not been made parties to the petition. Therefore, we feel that it would be inequitable to interfere in

> the selections which have taken place especially since the course started almost about 8 months back. The petitioner is, therefore, not granted any relief. However for future we wish to clearly state that for courses such as the Veterinary Pharmacist course and similar courses of this level the selection should be based only on the basis of tangible data such as written test or marks obtained in qualifying examination but not on the basis of any interview."

In the aforesaid judgments, we have clearly directed the State Government to ensure that in future no marks for interview are allocated in such like courses. Despite this, marks for interview have been allocated for admission to Patwari Training Course which in our considered opinion is not permissible and is against the law and guidelines laid down by this Court.

In the present case, we also find that the Deputy Commissioner did not invite applications by giving wide publicity. Only a news item appeared in certain news papers and thereafter the applicants were to approach the respondent No.3 and get the prescribed Performa. We deprecate this practice. We also find that in the press note issued, it was not clearly stated as to how many seats are reserved and for which categories.

We have also found in the present case that certain candidates were allowed to change their categories which should not normally be permissible. In the present case, however, we find that the petitioner has not been affected and he would not have been selected in the General category. On perusal of the entire record, we find that even if selections of one or two candidates are quashed and set aside,

the petitioner cannot get any benefit since all the persons who have been selected under the General Category have got much higher marks than the petitioner. We, however, find that the respondents have not followed the proper procedure to advertise the vacancies for the Patwari Training Course and the method which they adopted for inviting applications was totally improper and illegal. No advertisement was issued and only a press note was issued and thereafter the candidates have to come to the office of the respondent No.3 to obtain forms which have to be filled up.

In the present case, we cannot grant any relief to the petitioner since he himself has not suffered any dis-advantage and willingly appeared in the interview without challenging the same in Court. Furthermore, persons who have been selected have not been made parties and the Patwari Training Course was started a long time back and at this stage it would not be appropriate to set the clock back. However, we direct the State Government to ensure that in future while making selections to any of the courses like, Junior Basic Training Course (JBT), Veterinary Pharmacist Course (VPC), Patwari Training Course (PTC) or similar courses where the basic qualification is only 10+2, keeping in view the law laid down by this Court in **Ravinder Baloria and Rajiv Sharma's** cases *(supra)* no marks shall be allocated for interview and the selections shall be made only on the basis of a written test. In case we come across any violation of our orders, the same shall be dealt with strictly and the

concerned official(s) shall be liable to be punished under the Contempt of Courts Act. We, further direct that keeping in view the huge amount of unemployment and the availability of large number of qualified candidates all vacancies/admissions to such courses should be advertised by publication in at least three daily Newspapers having wide circulation in the area out of which one may be in English language and two in Hindi language. The advertisement should also specify the exact number of seats available and the number of seats earmarked for each category such as General Category, Scheduled Caste/Scheduled Tribes, Other Backward Classes, Ex-servicemen, reserved for women etc. etc. The advertisement itself may give the lay out of the format of the application, so that no candidate is in doubt about the format of the application. Documents/testimonials required to be annexed with the format should be clearly mentioned. It should also be clearly mentioned as to what documents are required in original and what documents can be supplied by way of giving copies of the same. In case certified copies of the documents are required, this should also be specified clearly in the advertisement.

The writ petition is disposed of in the aforesaid terms. A copy of this judgment be sent to the Chief Secretary to the Govt. of H.P. who shall ensure that a copy of this judgment as well as judgments delivered in **Ravinder Baloria and Rajiv Sharma's** cases are circulated to all the Heads of Department in H.P. who shall ensure

that in future admissions to courses like Patwari Training Course, Junior Basic Training Course, Veterinary Pharmacist Course as well as other courses where minimum qualification is 10+2 or below, is made only on the basis of a written test after following the guidelines mentioned hereinabove.

(Deepak Gupta), J

December 26, 2007 (V.K.Ahuja), J.

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